Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

16 March 2009
SEC-OGC Opinion No. 09-06
Re: Eligibility and Removal of Directors/Trustees

REYES-FAJARDO & ALCISO LAW OFFICES
1004-B Summit One Office Tower, 530 Shaw Boulevard, Mandaluyong City

Attention: Atty. Kenneth Paul Que

Sir:

This refers to your letter dated 4 February 2009 requesting opinion on a legal matter stated therein.

You mentioned that your client, a non-profit stock corporation, operates a club which admits only its shareholders as members; however, not all of your client's shareholders are members of the club as admission to such membership is subject to the approval by your client's Board of Directors ("the Board", for brevity). According to you, one such member – who is at the same time a director of your client ("member-director") -- has been complained of or charged for acts which may constitute as ground(s) for his expulsion as member of the club.

You thus inquire if the said expulsion of the member-director would automatically have the effect of removing him as a director, thereby dispensing with the requirements of Section 28 of the Corporation Code ("the Code").

Please be advised that the Commission does not, as a matter of settled policy, render opinions or categorical answers on queries or issues which may eventually be litigated in the future, such as those presented in your letter. The opinion which may be rendered thereon would not be binding upon private parties who would in all probability, if the opinion happens to be adverse to their interest, take issue therewith and contest it before the proper forum. The Commission also adheres to the hands-off policy in the interpretation and application of the provisions of the by-laws of a corporation on the issue(s) raised as they are internal and may be intra-corporate matters that should be resolved by the parties in the proper forum.[1] However, **for purposes of information only**, the following may be imparted:

Sections 23 and 92 of the Corporation Code ("the Code") provide:

[1] Subsections 5.2 and 5.3, SEC Memorandum Circular No. 5, Series of 2003.

with the board. In short, one's status as member of a non-stock corporation is not within his absolute control but is generally within that of the board.

Accordingly, the law is not without provisions for the protection of such members.

Firstly, it is mandated that membership shall be terminated only in the manner and for the causes provided in the articles of incorporation or by-laws.[6] In the absence of any provision on the matter, it is understood that the expulsion or suspension of a member must be based on just and reasonable ground after notice and hearing of the charge against him.[7]

In this connection, Item 7(e) of your Articles of Incorporation and Section 14, Article 1-A of your by-laws provide:

> "SEVENTH. x x x. e. In case any stockholder shall violate the provisions of these Articles or the By-Laws or rules and regulations of the Club, or resolutions duly promulgated by the Board of Directors or stockholders, or commit any other act or conduct which the Board of Directors may deem injurious to the interest of the Club, such stockholder may be suspended or expelled by the Board of Directors in the manner provided in the By-Laws upon proper notice and hearing, and in case expulsion, shall have no right with respect to his share except the right to transfer his share to his own purchaser."

> "Section 14. Suspension and Expulsion. The Board of Directors may, by majority vote of all its members, suspend or expel a member for conduct injurious to the welfare of the Club after first giving the member an opportunity to appear before the Board in his own defense."

Secondly, when the member happens to be a trustee, his expulsion as such member effectively negates his trusteeship. Verily, it may not be a simple termination of membership but may be tantamount to his removal as such trustee.

Section 28 of the Code, which mandates specific requirements for removal of directors or trustees, provides:

> "Sec. 28. Removal of directors or trustees. -- Any director or trustee of a corporation may be removed from office by a vote of the stockholders holding or representing two-thirds (2/3) of the outstanding capital stock, or if the corporation be a non-stock

[6] Section 91 of the Code.
[7] De Leon, The Corporation Code of the Philippines Annotated, 2002 Ed., p. 687.

"Sec. 23. The board of directors or trustees. -- Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines."

"Sec. 92. x x x. No person shall be elected as trustee unless he is a member of the corporation."

Thus, for one to be a director or trustee of a corporation, it is indispensable that he must satisfy the minimum qualification mandated by law, i.e. he must be a stockholder of record or member of the corporation.[2]

If a director ceases to own at least one share in his own name in the books of the corporation of which he is a director, then, by Section 23 of the Code, he automatically ceases to be a director.[3] The reason for this is that it is commonly felt that a man with a financial interest at stake will devote more attention to the business.[4] Whether he maintains or retains such shareholding(s) is practically within his exclusive and absolute control; but once he parts with the same, he no longer has such stake in the corporation, much less, in the management thereof.

The above may not be true for a trustee in a non-stock corporation. Section 36(6) of the Code expressly empowers a non-stock corporation to admit members, and in the absence of any express provision in the by-laws as to what body the admission of corporate members is lodged, it must logically be in the board of trustees because it is the board which exercises the corporate powers of all corporations formed under the Code.[5] It thus follows that the power to terminate such membership is likewise lodged

[2] SEC Opinion dated 8 December 1988 addressed to Mr. Ruben Jungaya.
[3] SEC Opinion No. 41, Series of 2003, dated 25 August 2003 addressed to Emerald Registry and Transfers Corporation; SEC Opinion dated 2 September 1991 addressed to Filipino-Indian Chamber of Commerce (Phil.), Inc.; De Leon, The Corporation Code of the Philippines Annotated, 2002 Ed., p. 231.
[4] De Leon, The Corporation Code of the Philippines Annotated, 2002 Ed., p. 235.
[5] Ibid., p. 685.

corporation, by a vote of two-thirds (2/3) of the members entitled to vote: Provided, That such removal shall take place either at a regular meeting of the corporation or at a special meeting called for the purpose, and in either case, after previous notice to stockholders or members of the corporation of the intention to propose such removal at the meeting. x x x."

The board of directors or trustees has no power to remove one of its members as director or trustee. The reason is that as officers deriving their title from the stockholders or members, directors or trustees can be removed only by the power that appointed them. Since the law expressly confers the authority to stockholders or members, the board cannot indirectly usurp or disregard the same.[8]

The opinion is based solely on the facts disclosed in the queries and relevant solely to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts.[9]

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[8] Ramiel, et al. vs. Jochico, et al., G.R. No. 153413, 1 March 2007; SEC Opinion dated 30 September 2002 addressed to Mrs. Juanita Quiambao; SEC Opinion dated 15 November 1995 addressed to Atty. Earnest A. Soberano; SEC Opinion dated 23 May 1985 addressed to Vernida I Condominium Corporation.
[9] Section 7, SEC Memorandum Circular No. 15, Series of 2003.